

ENTERED

May 04, 2023

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

TERRY EUGENE DURST,

Plaintiff,

V.

**BOBBY LUMPKIN, DIRECTOR, TEXAS
DEPARTMENT OF CRIMINAL
JUSTICE, CORRECTIONAL
INSTITUTIONS DIVISION,**

Defendant.

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Civil Action No. 4:23-CV-00106

ORDER ACCEPTING FINDINGS, CONCLUSIONS, AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE

Pending before the Court is the March 14, 2023, Memorandum and Recommendation (“M&R”) prepared by Magistrate Judge Peter Bray. (Dkt. No. 6). Magistrate Judge Bray made findings and conclusions and recommended that Plaintiff’s Petition for Writ of Habeas Corpus, (Dkt. No. 1), be dismissed without prejudice for failure to prosecute. (Dkt. No. 6).

The Parties were provided proper notice and the opportunity to object to the M&R. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). On April 3, 2023, Plaintiff filed what the Court construes to be an objection. (Dkt. No. 8). Plaintiff's filing does not address Judge Bray's findings, conclusions, or recommendation that the case be dismissed. (*Id.*).

In accordance with 28 U.S.C. § 636(b)(1)(C), the Court is required to “make a de novo determination of those portions of the [magistrate judge’s] report or specified proposed findings or recommendations to which objection [has been] made.” After

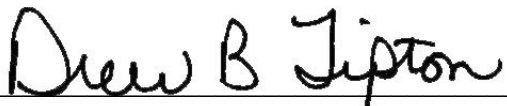
conducting this de novo review, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” *Id.*; *see also* Fed. R. Civ. P. 72(b)(3).

The Court has carefully considered de novo those portions of the M&R to which objection was made, and reviewed the remaining proposed findings, conclusions, and recommendations for plain error. Finding no error, the Court accepts the M&R and adopts it as the opinion of the Court. It is therefore ordered that:

- (1) Magistrate Judge Bray’s M&R, (Dkt. No. 6), is **ACCEPTED** and **ADOPTED** in its entirety as the holding of the Court; and
- (2) Plaintiff’s Petition for Writ of Habeas Corpus, (Dkt. No. 1), is **DISMISSED WITHOUT PREJUDICE**.

It is SO ORDERED.

Signed on May 4, 2023.



DREW B. TIPTON
UNITED STATES DISTRICT JUDGE